

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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OBA STEPHENS,	:
	:
Plaintiff,	:
	:
-v.-	:
	:
CITY OF NEW YORK, <i>et al.</i> ,	:
	:
Defendants.	:
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ORDER

15-CV-567 (WFK) (MDG)

WILLIAM, F. KUNTZ, II, United States District Judge:

Plaintiff Oba Stephens (“Plaintiff”) commenced this action by the filing of a complaint on February 15, 2015. Dkt. 1 (“Complaint”). Because Defendants in the above-captioned action had not appeared and no appropriate return of service had been filed, Magistrate Judge Marilyn D. Go issued an order directing Plaintiff to complete service and file returns by June 5, 2015. Dkt. 3 (“Order Advising Plaintiff”). In that same order, Magistrate Judge Go also advised Plaintiff that Federal Rule of Civil Procedure 4(m) provides that a court may dismiss an action against a defendant if service is not completed within 120 days after a complaint is filed. *Id.* Although Plaintiff failed to file a return of service, Magistrate Judge Go extended Plaintiff’s time to serve Defendants to August 14, 2015 and again warned Plaintiff that if service was not completed by that date, Magistrate Judge Go would recommend dismissal pursuant to Federal Rule of Civil Procedure 4(m). Dkt. 4 (“Order Extending Time”). On September 14, 2015, Magistrate Judge Go filed a Report and Recommendation recommending “this Court, *sua sponte*, dismiss the action without prejudice for failure to effectuate timely service within the 120 day period specified in Rule 4(m) of the Federal Rules of Civil Procedure.” Dkt. 5 (“Report and Recommendation”) at 1-2. Objections to the Report and Recommendation were required to be

filed by October 1, 2015. *See* Fed. R. Civ. P. 72(b)(2); *see also* Report and Recommendation at 2. No objections were filed.

DISCUSSION

In reviewing a Report and Recommendation, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). As objections have been filed, the Court reviews Magistrate Judge Go’s Report and Recommendation for clear error. *See Zeitone v. Korsinsky & Klein, LLP*, 13-CV-383, 2013 WL 5937397, at *1 (E.D.N.Y. Nov. 4, 2013) (Kuntz, J.) (citing *Reyes v. Mantello*, 00-CV-8936, 2003 WL 76997, at *1 (S.D.N.Y. Jan. 9, 2003) (Cote, J.)); *Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007) (Garaufis, J.).

“As indicated by the plain language of Rule 4(m), notice to the plaintiff must be given prior to a *sua sponte* dismissal.” *Thompson v. Maldonado*, 309 F.3d 107, 110 (2d Cir. 2002) (citation omitted). Here, Plaintiff was twice notified of the Court’s intent to dismiss the Complaint for failure to comply with the necessary service requirements under Federal Rule of Civil Procedure 4(m). *See* Order Extending Time; Order Advising Plaintiff. Moreover, no party has filed objections to the Report and Recommendation in this action. The Court finds that there was no clear error in the Report and Recommendation’s instruction to dismiss the action pursuant to Federal Rule of Civil Procedure 4(m). The Court therefore adopts Magistrate Judge Go’s Report and Recommendation in its entirety.

CONCLUSION

For the foregoing reasons, this Court adopts Magistrate Judge Go’s Report and Recommendation, Dkt. 5, in its entirety. Accordingly, it is hereby ordered that this case be

dismissed pursuant to Federal Rule of Civil Procedure 4(m). The Clerk of Court is directed to close the case.

SO ORDERED

s/WFK


HON. WILLIAM E. KUNTZ II
United States District Judge

Dated: October 5, 2015
Brooklyn, New York